

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:07CR3035
)	
v.)	
)	
JUAN MENDEZ,)	MEMORANDUM AND ORDER
)	
Defendant.)	
)	

A hearing was held before me on September 3, 2008 on the issue of the defendant's competency to stand trial. This matter has a long history, including a prior evaluation conducted at a federal medical facility pursuant to [18 U.S.C. 4241\(b\)](#); a finding of incompetence; a subsequent commitment to a different federal medical facility for treatment to restore competence, followed by a finding of continued incompetence and a recommendation for involuntary administration of psychotropic medication to restore competence. See memorandum and order of April 18, 2008, [filing 25](#). A hearing was scheduled to determine if (a) defendant remained incompetent, and (b) if so, whether to authorize the involuntary administration of psychotropic medication to restore competence.

Subsequent to the scheduling of the hearing, defendant's counsel informed the court and the government that he believed the defendant was not incompetent, because he was able to assist counsel in preparing for the hearing and otherwise in preparing the case. Therefore, I ordered another mental health evaluation to be completed locally, with a report of conclusions to be provided to the court and counsel. That evaluation concluded that the defendant is competent to proceed. Faced with the conflicting reports and opinions, the court prepared to hear the

matter as scheduled. At the joint request of counsel for the parties, however, and because of the difficulty of taking the testimony of the expert witnesses from the federal medical center in Butner, North Carolina, I agreed to bifurcate the hearing, reserving the issue of involuntary medication for rescheduling in the event the defendant were to be found incompetent.

The hearing was held and evidence was adduced. In the course of the hearing I discussed with the defendant his mental and emotional status and his knowledge of the pending charges and the proceedings, as well as his perception of his ability to assist his lawyer in defending the case. Considering all of the evidence, and affording counsel opportunities for allocution, I concluded, by a preponderance of the evidence, that the defendant has regained competence to stand trial. Accordingly,

IT THEREFORE HEREBY IS ORDERED:

1. The defendant is determined to be competent to proceed to trial.

2. Trial is tentatively scheduled to commence at 9:00 a.m. on December 8, 2008, before the Honorable Richard G. Kopf in Courtroom 1, United States Courthouse and Federal Building, 100 Centennial Mall North, Lincoln, Nebraska. Jury selection will be held at commencement of trial.

3. Counsel shall inform the court as soon as possible whether the trial need be held. In the event it becomes unnecessary to proceed to trial, a hearing before the undersigned to receive a plea in the case is tentatively set to commence at 10:00 a.m. on September 19, 2008.

DATED this 4th day of September, 2008.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge